

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERBAD**

**WEDNESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION NO: 124 OF 2022

Petition under Article 227 of the Constitution of India, aggrieved by Order dated 08.12.2021 in I.A.No. 644 of 2021 in I.A.No. 152 of 2020 in O.S. No. 56 of 2020 on the file of Junior Civil Judge-cum-Judicial Magistrate of First Class, At Narsapur, Medak District.

Between:

K.Shankaraiah, S/o. Late Peddulu, aged 56 years, Occ. Agriculture, R/ o. Kagazmaddur Village of Narsapur Mandal, Medak District.

...PETITIONER

AND

K. Ramana, S/o. Late Laxmaiah, aged 45 years, Occ.business, R/o. Kagazmaddur village of Narsapur Mandal, Medak district

...RESPONDENT

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the order dated 08.12.2021 passed in I.A.No. 644 of 2021 in I.A.No. 152 of 2020 in O.S. No. 56 of 2020 on the file of Junior Civil Judge-cum-Judicial Magistrate of First Class, at Narsapur, Medak District.

IA NO: 2 OF 2022

Between:

K. Ramana, S/o. Late Laxmaiah, aged 45 years, Occ.business, R/o. Kagazmaddur village of Narsapur Mandal, Medak district

...PETITIONER

AND

K.Shankaraiah, S/o. Late Peddulu, aged 56 years, Occ. Agriculture, R/ o. Kagazmaddur Village of Narsapur Mandal, Medak District.

...RESPONDENT

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed herewith, the High Court may be pleased to vacate the interim orders granted in C.R.P.no. 124 of 2022 dt. 28-1-2022 which were later extended from time to time, in the interest of justice.

Counsel for the Petitioner: MR. P V L BHANU PRAKASH, ADVOCATE IN CRP NO.124/22 AND FOR RESPONDENT IN I.A. NO. 2/22

Counsel for the Respondents: MR. KARUNAKAR REDDY, ADVOCATE IN CRP NO. 124/2022 AND FOR PETITIONER IN I.A.NO. 2/22

The Court made the following: ORDER

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P.NO.124 of 2022

ORDER :

Feeling aggrieved by the orders of learned Junior Civil Judge, Narsapur in I.A.No.644 of 2021 in I.A.No.152 of 2020 in O.S.No.56 of 2020, which is filed under Order XXVI Rule 9 r/w Section 151 C.P.C., whereunder the learned Junior Civil Judge, Narsapur, herein after will be referred as trial Court, allowed the application of the respondent/defendant and appointed an Advocate Commissioner to note down the physical features of suit schedule property with the help of Mandal Surveyor, the petitioner who is plaintiff in the above referred suit filed the present revision under Article 227 of Constitution of India.

2. The respondent/defendant has filed I.A.No.644 of 2021 with a prayer to appoint an Advocate Commissioner for demarcation of properties and fix up the boundaries with the help of a qualified Surveyor. As per the affidavit filed in support of the petition, it seems the petitioner herein has filed O.S.No.56 of 2020 for a perpetual injunction in respect of land to an extent of Ac.01-00 gts in Sy.No.139/3/105 at Kagazmaddur Village. The respondent/defendant having disputed the boundaries mentioned

In the plaint schedule, further pleaded that he and his family members are in possession of land in Sy.Nos.61 and 63 which are adjacent to the suit schedule property. The respondent claimed that he has been in possession of Sy.Nos.61 and 63 even prior to issuance of patta in favour of the petitioner herein. Therefore, the question of his encroachment on the land of petitioner does not arise. He has further claimed that he got the land in Sy.Nos.61 and 63 surveyed and the Surveyor fixed the boundaries to his land on 11-02-2020. The respondent/defendant has claimed that since there is a boundary dispute, if a Commissioner is appointed for demarcation of the land with the help of Surveyor, the dispute will be solved, thereby sought for appointment of a Commissioner for demarcation of the properties owned by petitioner and respondent with the help of a Surveyor.

3. The petitioner herein has opposed the said petition, filed a counter stating that the respondent herein has no land adjacent to the land in Sy.No.139. He has already sold the property to various other persons. Since the respondent has no land, the question of survey and fixing the boundaries does not arise, thereby sought for dismissal of the petition. However, the learned trial Judge allowed the application by a cryptic order in the following terms :

"07. Heard on both sides and on perusal of the entire material available, it is pertinent to note that, the present petition is filed by the petitioner/defendant as there are the boundaries dispute in respect of the suit schedule property in Sy.No.139/3/105 admeasuring Ac.1-00 gts, and along with the Sy.Nos.61 & 63 situated at Kagazmaddur Village of Narsapur Mandal, Medak District, for the purpose of conducting survey with the help of Mandal Surveyor and to fix the boundaries of both the lands in Sy.No.139/3/105 & 61 & 63, the truth will come out.

Moreover, it is settled principle that, Appointment of Advocate Commissioner for noting down the physical features of the property would enable the court to understand the physical features of suit property existing as on the date of filing of the suit and to arrive at appropriate decision regarding identity of the property.

Hence, in these circumstances, this Court is of opinion that, this petition is maintainable under the eye of law and it is liable to be allowed. Accordingly, the point is answered.

08. In the result, the petition is allowed for appointment of an Advocate Commissioner to note down the physical features of the suit in Sy.Nos.139/3/105 and also the land in Sy.Nos.61 & 63 with the help of Mandal Surveyor and Sri P.Sudhakar, Advocate is appointed as an Advocate Commissioner by fixing his fees of Rs.6,000/- and for report by 24.01.2022 and to file the receipt for receiving the fees".

4. Heard both parties.

5. Now the point for consideration is :

Whether the order of the trial Court is erroneous and liable to be set aside?

6. As per the entire record filed along with the revision petition, it is very clear that the petitioner herein filed the main

suit seeking perpetual injunction in respect of an agricultural land admeasuring Ac.01-00 gts within specific boundaries mentioned in the suit schedule land which is in Sy.No.139/3/105 at Kagazmaddur Village. According to the plaint averments, it was specifically pleaded by the petitioner herein that he is the absolute owner and possessor of the suit schedule property. He got the same by way of a patta by the Government but the respondent made an attempt to interfere with the property, thereby he sought for perpetual injunction.

7. Whereas, the respondent/defendant claims that he has got land in Sy.Nos.61 and 63 and that his land is adjacent to the suit schedule property. It is not the case of the respondent that the petitioner herein has no such land in Sy.No.139 nor it is his case that the petitioner made an attempt to occupy the land owned by the petitioner in Sy.Nos.61 and 63. The only plea of the respondent while filing petition under Order XXVI Rule 9 r/w Section 151 C.P.C. was the appointment of a Commissioner with a direction to measure the lands with the help of a Surveyor will solve the disputes between the parties.

8. The respondent/defendant did not explain any reason for seeking such appointment nor he has filed any documents evidencing his possession on the land in Sy.Nos.61 and 63. Even

if the respondent got land adjacent to the suit property, there is no necessity for him to get the land demarcated by survey in a suit filed by the petitioner/plaintiff for a perpetual injunction. The petitioner being plaintiff in the suit filed for perpetual injunction is under obligation to establish his title as well as possession, if he is not able to prove his possession, automatically the suit will be dismissed and there is no necessity for the respondent/defendant to establish that the petitioner has no such land. In fact, the respondent did not claim that petitioner has no land in the suit survey number. It is settled law that appointment of a Commissioner cannot be made for the purpose of collection of evidence. Therefore, the trial Court without assigning any reasons and without any discussion, allowed the application and passed impugned order which is liable to be set aside.

9. In the result, the petition is allowed. The order of the trial Court is set aside.

Consequently, Miscellaneous applications if any, are closed.
There shall be no order as to costs.

//TRUE COPY//

Sd/- K. AMMAJI
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Junior Civil Judge-Cum-Judicial Magistrate of First Class at Narsapur, Medak District.
2. One CC to SRI. P V L BHANU PRAKASH Advocate [OPUC]

3. One CC to SRI. KARUNAKAR REDDY Advocate [OPUC]

4. Two CD Copies

VH

[Handwritten signature]

HIGH COURT

SSRN, J

DATED: 30/11/2022

ORDER

CRP.No.124 of 2022



Allowing the CRP without costs

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10/1/23
JH